

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: ETHICON, INC. PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL No. 2327
THIS DOCUMENT RELATES TO ETHICON WAVE 6 MOTIONS	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

**MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE
CERTAIN GENERAL OPINIONS OF DANIEL ELLIOTT, M.D.**

Defendants Ethicon, Inc. and Johnson & Johnson (collectively “Ethicon”) submit this memorandum in support of their motion to exclude certain general opinions of Dr. Daniel Elliott, M.D., with respect to the cases set forth in Exhibit A to Defendants’ accompanying motion.

Ethicon hereby adopts and incorporates by reference all of the arguments that it presented as part of its briefing related to Dr. Elliott in the Wave 5 cases. *See* Doc. 4364 (Motion); 4367 (Memorandum in Support); and 4635 (Reply). Ethicon also asserts the following additional argument:

I. The Court should preclude Dr. Elliott from providing general opinions about Prolift +M, because he has not disclosed any opinions about that device.

One of the Wave 6 cases involves Plaintiffs who designated Dr. Elliott as a general causation expert, Shannon and Peter Putano, Case No. 2:13-cv-00275. Mrs. Putano was implanted with a TVT-O device and a Prolift +M device. Ex. B, Product identification labels. Although Dr. Elliott has prepared a general TVT-O report, Dr. Elliott has not prepared a report for Prolift +M. Dr. Elliott has prepared a Prolift report, but that report does not set forth opinions specific to Prolift +M. In fact, Dr. Elliott’s Prolift report draws a distinction between Prolift and Prolift +M, and indicates that his Prolift report is focused on the “GYNECARE PROLIFT Total,

Anterior, and Posterior Pelvic Floor Repair Systems...” Prolift Report at 2; *see also* Prolift Report at 12 (“The Prolift kit uses Prolene Soft Mesh (intended for hernia repair) and the Prolift+M kit uses Ultrapro (intended for hernia repair)”). To the extent that Dr. Elliott intends to provide general opinions in this case about Prolift +M, the Court should exclude such opinions as being undisclosed.

This Court has recognized that, “[u]nder Rule 26, expert reports must contain ‘a complete statement of all opinions the witness will express and the basis and reasons for them.’” *Lewis v. Ethicon, Inc.*, 2014 WL 186872, at *17 (S.D.W. Va. Jan 15, 2015) (citing Fed. R. Civ. P. 26(a)(2)(B)(i)). Because Dr. Elliott has not disclosed any opinions about Prolift +M, the Court should preclude him from testifying about that device in this wave of cases. Otherwise, Ethicon would be prejudiced.

CONCLUSION

For the foregoing reasons and those set forth in Docs. 4364, 4367, and 4635, the Court should limit Dr. Elliott’s general opinions consistent with the above.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Christy D. Jones, certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

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